UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,402	10/25/2000	Howard W. Fingerhut	20009.0006US01(00189)	2671

45695   7590   06/09/2008
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ART UNIT	PAPER NUMBER
2152	

MAIL DATE	DELIVERY MODE
06/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	09/695,402	FINGERHUT ET AL.
Office Action Summary	Examiner	Art Unit
	DUYEN M. DOAN	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 February 2008*.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-39,41-52 and 54-87* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-5,7-39,41-52 and 54-87* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on *25 October 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
        1.☐ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____ .
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
       Paper No(s)/Mail Date _____ .
4) ☐ Interview Summary (PTO-413)
       Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

This office action is in response to the submission filed on 2/13/2008. Claims 1-5,7-39,41-52,54-87 are amended for examination.

Response to Arguments

Applicant's arguments with respect to claims 1-5,7-39,41-52,54-87 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5,7-35,60-77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1,14, 25, 60, 69 recite the limitation "determine the time" . There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

Claims 1-5,7-39,41-52,54-87 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Diebboll et al (us pat 5,886,643) (hereinafter Dieb) in view of

Galand et al (us pat 6,424,624) (hereinafter Gal) and further in view of Messinger et al

(us pat 6,687,750) (hereinafter Mes).

As regarding claim 1, Dieb discloses creating a histogram file associate with one

of a node and a link within the packet-switched network (see Dieb col.1, lines 15-22;

col.5, lines 15-22, creating a report for each node, a segment on a network, the report

can be a pie charts, scatter grams, histories); generating a traffic log at a first location

within the packet-switched network, a traffic log specific to a particular packet based

upon detection of a content of the packet (see Dieb col.2, lines 1-10), the traffic log

containing a plurality of values detected within the packet comprising a network entry

point of the packet, and a network exit point of the packet (see Dieb col.6, lines 35-49,

the log record information from the packet such as source/destination field); transferring

the traffic log from the first location to a second location (see Dieb col.5, lines 29-35,

transfer the collected information from the probes to NMS); storing the traffic log

generated by the network at the second location (see Dieb col.2, lines 1-10, store data

at the second location which is the NMS); analyzing the stored traffic log to determine

one or more nodes of a path traversed by the packet through the packet switched

network form the network entry point to the network exit point (see Dieb col.7, lines 19-

49); updating the histogram file according to at least one of the entry and exit points of

the packet (see Dieb col.3, lines 29-32).

Dieb does not explicitly disclose wherein the packet state includes a congested

state; the time of creation of the traffic log; wherein the histogram file is utilized to

monitor network conditions in near real-time enabling the detection and correction of

network overloads and congestion before network customers are affected.

Gal teaches the extracted information from the network packet and determine the

congestion of the network (see Gal col.3, lines 14-16, lines 40-46, congestion is

identified throughout the network and transferred by setting an indicator in the packet

header); real time traffic (see Gal col.2, lines 22; col.5, lines 17-32).

It would have been obvious to one with ordinary skill in the art at the time the

invention was made to combine the teaching of Gal to the method of Dieb to determine

the congestion state of the packet for the purpose of detecting congestion and flow

control for low priority traffic with optimized cost efficiency (see Gal col.1, lines 7-11).

The combination of Dieb and Gal does not teach the time of creation of the traffic

log; wherein the histogram file is utilized to monitor network conditions and enabling the

detection and correction of network overloads and congestion before network

customers are affected.

Mes discloses the time of creation of the traffic log and the network entry and exit

points of the packet (see Mes col.3, lines 28-52, the time stamp indicated when the

report is created); wherein the histogram file is utilized to monitor network conditions in

near real-time enabling the detection and correction of network overloads and

congestion at one of a network node and a network node link before network customers

are affected (the wherein clause merely states the result of the limitations in the claim

adds nothing to the patentability or substance of the claim, for example, one person with

ordinary skill in the art having a method as discloses by Dieb, Gal and Mes would use

this method for monitor network condition, correcting congestion before the user

affected, the same method can be use to monitor the Qos or else is up to user what

he/she want to use it for (see MPEP 2111).

It would have been obvious to one with ordinary skill in the art at the time the

invention was made to combine the teaching of Mes to the method of Dieb-Gal to

include the histogram file for the purpose of visualizing the display of network traffic

information, allowing the administrator to rapidly obtain and assimilate substantial

amount of information (see Mes col.1, lines 5-9, lines 57-67).

As regarding claim 2, Dieb-Gal-Mes discloses wherein the histogram file is a flat

file, whereby direct and rapid access to stored data is effected (see Mes col.1, lines 57-

67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was

utilized in claim 1 applied equally well to claim 2.

As regarding claim 3, Dieb-Gal-Mes discloses wherein two histogram files are

created, a first histogram being representative of traffic being passed into the network

and a second histogram being representative of the traffic being passed from the

network (see Mescol.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19,

if one can generate a histogram file, it is obvious to generate a second one or a third

one base on the criteria set, in this case the ingress point and the egress point). The

same motivation was utilized in claim 1 applied equally well to claim 3.

As regarding claim 4, Dieb-Gal-Mes discloses the histogram file is representative

of traffic passing to a host connected to the entry or exit point (see Dieb col.5, lines 42-

51).

As regarding claim 5, Dieb-Gal-Mes discloses repeating steps (b) - (d) for at least

a predetermined period (see Dieb col.5, lines 42-51).

As regarding claim 7, Dieb-Gal-Mes discloses wherein the histogram plots

packets per minute versus time (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines

28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally

well to claim 7.

As regarding claim 8, Dieb-Gal-Mes discloses broadcasting from a server

computer data representative of the histogram to a client computer (see Mes col.1, lines

57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was

utilized in claim 1 applied equally well to claim 8.

As regarding claim 9, Dieb-Gal-Mes discloses wherein the network is a Mobitex

network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-

19). (note: Mobiltex technology is a well-known packet data network).

As regarding claim 10, Dieb-Gal-Mes discloses displaying a histogram based on

data in the histogram file (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-

52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to

claim 10.

As regarding claim 11, Dieb-Gal-Mes discloses creating at least one histogram

for each host of the network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines

28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally

well to claim 11.

As regarding claim 12, Dieb-Gal-Mes discloses selecting for display the at least

one histogram for a particular host (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3,

lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied

equally well to claim 12.

As regarding claim 13, Dieb-Gal-Mes discloses monitoring a central location of the network for new traffic logs (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 14, the limitations of claim 14 are similar to limitations of rejected claim 1 above, Dieb further discloses determining a network path between the entry and exit points of the packet; determining whether the node falls along the network path (see Dieb col.5, lines 27-51).

As regarding claims 15-24, the limitations of claims 15-24 are similar to limitations of claims 1-5, 7-13, therefor rejected for the same rationales as claims 1-5, 7-13.

As regarding claim 25, the limitations of claim 25 are similar to limitations of rejected claim 1 above, Dieb further discloses determine whether a link falls along the network path; determining a number of bytes carried by the packet associated with the traffic log (see Dieb col.6, lines 30-51).

As regarding claims 26-35, the limitations are similar to limitations of claims 2-5, 7-13, therefore rejected for the same rationales as claims 2-5, 7-13.

As regarding claim 36, the limitations of claim 25 are similar to limitations of rejected claim 1 above; Mes further discloses deleting the traffic log (see Mes col.3,

lines 28-52, delete the file at the administrator discretion). The same motivation was

utilized in claim 1 applied equally well to claim 36.

As regarding claims 37-39,41-42, the limitations are similar to limitations of

claims 2-5, 7-13, therefore rejected for the same rationales as claims 2-5, 7-13.

As regarding claims 43-48, the limitations are similar to limitations of claims 14-

24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 49-52,54-59, the limitations are similar to limitations of

claims 1-5,7-13, therefore rejected for the same rationales as claims 1-5,7-13.

As regarding claims 60-68, the limitations are similar to limitations of claims 14-

24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 69-77, the limitations are similar to limitations of claims 14-

24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 78-83, the limitations are similar to limitations of claims 14-

24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 84-87, the limitations are similar to limitations of claims 14-24, therefore rejected for the same rationales as claims 14-24.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DUYEN M. DOAN whose telephone number is (571)272-4226. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax

phone number for the organization where this application or proceeding is assigned is

571-273-8300.

Information regarding the status of an application may be obtained from the

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner
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Art unit 2152

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